

(THACHER, PROFFITT & Wood)

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5-119A048

RECORDATION NO. 14631-B  
FILE 1425

No. APR 23 1985 APR 23 1985 -2 35 PM  
Date  
Fec 10.11  
INTERSTATE COMMERCE COMMISSION  
ICC Washington, D.C. April 25, 1985

COUNSEL  
J. FRANK WOOD  
JOHN W. WHEELER  
ROBERT S. STITT  
EARL L. MARSHALL  
LAWRENCE W. GOLDE

\*NOT ADMITTED IN NEW YORK

Mr. James H. Bayne  
Secretary  
Interstate Commerce Commission  
Washington, D.C.

Dear Mr. Bayne:

I have enclosed six (6) originals of the document described below, to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is an Amendment Number One to Lease of Railroad Equipment, dated as of April 23, 1985, a secondary document. The primary document to which this document relates is a Lease of Railroad Equipment, dated as of April 1, 1985, recorded with the Interstate Commerce Commission on April 22, 1985 as recordation number 14631.

The names and addresses of the parties to this document are as follows:

Lessor: Steiner Financial Corporation  
One Market Plaza, Suite 2400  
San Francisco, California 94105

Lessee: Missouri-Kansas-Texas Railroad Company  
701 Commerce Street  
Dallas, Texas 75202

*This should be 14631-B*  
*Accountant G. H. Harman*

A description of the equipment covered by this document follows:

Forty-One (41) screened bi-level auto racks manufactured by Thrall Car Manufacturing Company bearing Missouri-Kansas-Texas Railroad Company road numbers T-1 through T-41, inclusive, attached respectively to Trailer Train Company flatcars bearing Trailer Train Company road numbers TTGX 254131, TTGX 254055, TTGX 255205, TTGX 254041, TTGX 256190, TTGX 254087, TTGX 255554, TTGX 254016, TTGX 253902, TTGX 253887, TTGX 255182, TTGX 255283, TTGX 254371, TTGX 255560, TTGX 254385, TTGX 254265, TTGX 254403, TTGX 254453, TTGX 254121, TTGX 254779, TTGX 254083, TTGX 255393, TTGX 255212, TTGX 253985, TTGX 254607, TTGX 253928, TTGX 253925, TTGX 255158, TTGX 254178, TTGX 254459, TTGX 253918, TTGX 255235, TTGX 254255, TTGX 255413, TTGX 254170, TTGX 256228, TTGX 255450, TTGX 255338, TTGX 256146, TTGX 255262, and TTGX 254045.

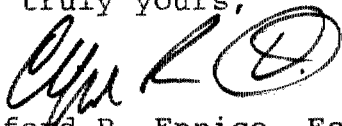
A short summary of the documents to appear in the index follows:

Covers 41 auto racks: T-1 through T-41.

A fee of \$10 is enclosed, to cover the filing fee for this document.

Please return to bearer the stamped counterparts not needed by the Commission for its files.

Very truly yours,

  
Clifford R. Ennico, Esq.

AMENDMENT NUMBER ONE  
TO  
LEASE OF RAILROAD EQUIPMENT

RECORDATION NO. 14631-15  
APR 29 1985 -2 15 PM

INTERSTATE COMMERCE COMMISSION

THIS AMENDMENT NUMBER ONE TO LEASE OF RAILROAD EQUIPMENT, dated as of April 23, 1985, by and between STEINER FINANCIAL CORPORATION, a Utah corporation having its principal place of business at One Market Plaza, Suite 2400, San Francisco, California 94105 (the "Lessor"), and MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, a Delaware corporation having its principal place of business at 701 Commerce Street, Dallas, Texas 75202.

W I T N E S S E T H :

WHEREAS, the Lessor and the Lessee are parties to the Lease of Railroad Equipment, dated as of March 1, 1985 (the "Lease"), which Lease was filed with the Interstate Commerce Commission on April 22, 1985 as recordation number 14631, pursuant to which the Lessor has leased to the Lessee the 41 screened bi-level auto racks more particularly described therein; and

WHEREAS, the Lessor and the Lessee desire to amend the Lease as permitted by Section 24 thereof.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the Lessor and the Lessee hereby formally covenant, agree and bind themselves as follows:

ARTICLE 1. The final recital on page 1 of the Lease is hereby amended to read as follows:

"WHEREAS, the Lessor will assign certain of its rights under this Lease for security to Liberty Life Insurance Company, a South Carolina corporation (together with its successors and assigns, the "Lender") pursuant to a Security Agreement (the "Security Agreement") and an Assignment of Lease and Agreement (the "Assignment of Lease and Agreement"); and"

ARTICLE 2. Section 4.1 of the Lease is hereby amended to read as follows:

"4.1. Beginning and Termination; Survival. The term of this Lease as to each Item of Equipment shall begin on the date of delivery of such Item of Equipment under the Purchase Order and, subject to the provisions of §§ 8, 14 and 17 hereof, shall terminate on the date on which the final payment of rent in respect thereof is made pursuant to §3.1 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§ 6,

7, 8, 11, 12, 13, 15, 18 and 20 hereof) shall survive the expiration of the term of this Lease."

ARTICLE 3. The first sentence of Section 13.1 of the Lease is hereby amended to read as follows:

"13.1 Indemnified Persons. The Lessee shall pay, and shall protect, indemnify and hold the Lessor (in both its individual and fiduciary capacities), and the Lender and their respective successors, assigns, agents and servants ("Indemnified Persons"), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising, or alleged to arise, out of this Lease, the Participation Agreement, the Security Agreement, the Assignment of Lease and Agreement, or the Equipment, including, without limitation, those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Item of Equipment or portion thereof, (ii) any latent and other defects whether or not discoverable by the Lessor, the Lender or the Lessee, (iii) any claim for patent, trademark or copyright infringement, (iv) any claims based on strict liability in tort, (v) any injury to or death of any person or any damage to or loss of property on or near the Equipment or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Equipment or of any other equipment in connection with the Equipment (whether owned or under the control of the Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof, (vi) any violation of any provision of this Lease (except by the Lessor (or of any agreement, law, rule, regulation, ordinance or restriction affecting or applicable to the Equipment or the leasing, ownership, use, replacement, adaptation or maintenance thereof, or (vii) any claim arising out of any of the Lessor's obligations under, or the Lender's retention of a security interest under, the Participation Agreement, the Assignment of Lease and Agreement or the Security Agreement, except to the extent such claim arises from the negligence of willful misconduct of the party claiming indemnification (all of which matters hereinabove set forth in this paragraph being hereinafter called "Indemnified Matters")."

ARTICLE 4. Paragraph (b) of Section 14.1 of the Lease is hereby amended to read as follows:

"(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises, insofar as the Lessee may be lawfully authorized so to permit, where any of the Items of Equipment may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Items of Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Equipment for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days in such full rental period, and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty (i) a sum, with respect to each Item of Equipment, which represents (x) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Item of Equipment which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Item of Equipment, such present value to be computed on the basis of an 8% per annum discount, compounded quarterly from the respective dates upon which rental would have been payable hereunder had this Lease not been terminated over the then present value of the rental which the Lessor reasonably estimates to be obtainable for each Item of Equipment during such period, such present value to be compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated or, if such Item of Equipment is sold, the net proceeds of the sale plus (y) any damages and expenses, including, without limitation, reasonable attorneys' fees and expenses, in addition thereto, which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental or (ii) an amount equal to the excess, if any, of the Casualty Value as of the Casualty Payment Date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Item of Equipment at such time; provided, however, that in the event the Lessor shall have sold any Item of Equipment, the Lessor, in lieu of collecting any amounts payable by the Lessee pursuant to the preceding clause (ii) with respect to such Item of Equipment may, if it shall so elect, demand that the Lessee pay the

Lessor, and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Item of Equipment, as of the Casualty Payment Date on or next preceding the date of termination over the net proceeds of such sale. The Lessee will pay all reasonable expenses, including, without limitation, attorneys' fees and expenses, incurred by the Lessor or the Lender in enforcing their respective remedies under the terms of this Lease."

ARTICLE 5. The last sentence of paragraph (2) of Section 16.1 of the Lease is hereby amended to read as follows:

"No assignment, sublease or other relinquishment of the possession of any Item of Equipment (whether or not authorized hereunder) shall in any way discharge or diminish any of the Lessee's obligations to the Lessor hereunder, and the Lessee shall continue to be primarily liable hereunder irrespective of any sublease, assignment or other relinquishment of possession."

ARTICLE 6. Section 26 of the Lease is hereby amended to read as follows:

"This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart marked "Counterpart No. 1" and delivered to the Lender pursuant to the Participation Agreement and the Security Agreement shall be deemed to constitute the only original of this Lease constituting "chattel paper" for purposes of the Uniform Commercial Code of the State of California, all other counterparts being deemed duplicates hereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed. This Lease shall constitute an agreement of lease and nothing herein shall be construed as conveying to the Lessee any right, title or interest in or to the Equipment, except as lessee only."

ARTICLE 7. This Amendment No. One to Lease of Railroad Equipment may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart marked "Counterpart No. 1" and delivered to the Lender pursuant to the Participation Agreement and the Security Agreement shall be deemed to constitute the only original of this Lease constituting "chattel paper" for purposes of the Uniform Commercial Code of the State of California, all other counterparts being deemed duplicates hereof. Although for convenience this Amendment No. One to Lease of Railroad Equipment is dated as of the date

first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

ARTICLE 8. Except as herein stated, all other terms and conditions of the Lease remain unchanged and are in full force and effect.

IN WITNESS WHEREOF, the parties hereto have each caused this Amendment No. One to Lease of Railroad Equipment to be executed by their respective officers thereto duly authorized.

STEINER FINANCIAL CORPORATION,  
as Lessor

By M W

Title PRESIDENT

(SEAL)

ATTEST:

Murley K Green

Title ASSISTANT SECRETARY

MISSOURI-KANSAS-TEXAS RAILROAD  
COMPANY, as Lessee

By \_\_\_\_\_

Title \_\_\_\_\_

(SEAL)

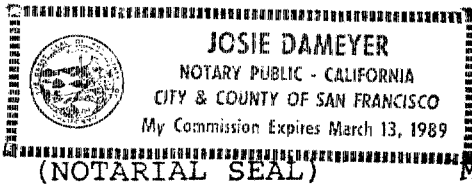
ATTEST:

\_\_\_\_\_

Title \_\_\_\_\_

STATE OF CALIFORNIA       )  
                                      : ss.:  
COUNTY OF SAN FRANCISCO)

On the 23<sup>rd</sup> day of April, 1985, before me personally appeared Paul C Keplea, who, being by me duly sworn, did say that he/she is an Authorized Officer of STEINER FINANCIAL CORPORATION, that one of the seals affixed to the foregoing instrument is the seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation by authority of its by-laws and by resolution of its board of directors, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.



Josie Dameyer  
Notary Public

My commission expires: 3-13-89

STATE OF TEXAS       )  
                                      : ss.:  
COUNTY OF DALLAS    )

On the \_\_\_\_\_ day of April, 1985, before me personally appeared \_\_\_\_\_, who, being by me duly sworn, did say that he/she is an Authorized Officer of MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation, by authority of its by-laws and by resolution of its board of directors, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

\_\_\_\_\_  
Notary Public

(NOTARIAL SEAL)

My commission expires: \_\_\_\_\_



AMENDMENT NUMBER ONE  
TO  
LEASE OF RAILROAD EQUIPMENT

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7, 8, 11, 12, 13, 15, 18 and 20 hereof) shall survive the expiration of the term of this Lease."

ARTICLE 3. The first sentence of Section 13.1 of the Lease is hereby amended to read as follows:

"13.1 Indemnified Persons. The Lessee shall pay, and shall protect, indemnify and hold the Lessor (in both its individual and fiduciary capacities), and the Lender and their respective successors, assigns, agents and servants ("Indemnified Persons"), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising, or alleged to arise, out of this Lease, the Participation Agreement, the Security Agreement, the Assignment of Lease and Agreement, or the Equipment, including, without limitation, those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any Item of Equipment or portion thereof, (ii) any latent and other defects whether or not discoverable by the Lessor, the Lender or the Lessee, (iii) any claim for patent, trademark or copyright infringement, (iv) any claims based on strict liability in tort, (v) any injury to or death of any person or any damage to or loss of property on or near the Equipment or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Equipment or of any other equipment in connection with the Equipment (whether owned or under the control of the Lessor, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof, (vi) any violation of any provision of this Lease (except by the Lessor (or of any agreement, law, rule, regulation, ordinance or restriction affecting or applicable to the Equipment or the leasing, ownership, use, replacement, adaptation or maintenance thereof, or (vii) any claim arising out of any of the Lessor's obligations under, or the Lender's retention of a security interest under, the Participation Agreement, the Assignment of Lease and Agreement or the Security Agreement, except to the extent such claim arises from the negligence of willful misconduct of the party claiming indemnification (all of which matters hereinabove set forth in this paragraph being hereinafter called "Indemnified Matters")."

ARTICLE 4. Paragraph (b) of Section 14.1 of the Lease is hereby amended to read as follows:

"(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises, insofar as the Lessee may be lawfully authorized so to permit, where any of the Items of Equipment may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Items of Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Equipment for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days in such full rental period, and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of the bargain and not as a penalty (i) a sum, with respect to each Item of Equipment, which represents (x) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Item of Equipment which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Item of Equipment, such present value to be computed on the basis of an 8% per annum discount, compounded quarterly from the respective dates upon which rental would have been payable hereunder had this Lease not been terminated over the then present value of the rental which the Lessor reasonably estimates to be obtainable for each Item of Equipment during such period, such present value to be compounded quarterly from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated or, if such Item of Equipment is sold, the net proceeds of the sale plus (y) any damages and expenses, including, without limitation, reasonable attorneys' fees and expenses, in addition thereto, which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental or (ii) an amount equal to the excess, if any, of the Casualty Value as of the Casualty Payment Date on or next preceding the date of termination over the amount the Lessor reasonably estimates to be the sales value of such Item of Equipment at such time; provided, however, that in the event the Lessor shall have sold any Item of Equipment, the Lessor, in lieu of collecting any amounts payable by the Lessee pursuant to the preceding clause (ii) with respect to such Item of Equipment may, if it shall so elect, demand that the Lessee pay the

Lessor, and the Lessee shall pay to the Lessor on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Item of Equipment, as of the Casualty Payment Date on or next preceding the date of termination over the net proceeds of such sale. The Lessee will pay all reasonable expenses, including, without limitation, attorneys' fees and expenses, incurred by the Lessor or the Lender in enforcing their respective remedies under the terms of this Lease."

ARTICLE 5. The last sentence of paragraph (2) of Section 16.1 of the Lease is hereby amended to read as follows:

"No assignment, sublease or other relinquishment of the possession of any Item of Equipment (whether or not authorized hereunder) shall in any way discharge or diminish any of the Lessee's obligations to the Lessor hereunder, and the Lessee shall continue to be primarily liable hereunder irrespective of any sublease, assignment or other relinquishment of possession."

ARTICLE 6. Section 26 of the Lease is hereby amended to read as follows:

"This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart marked "Counterpart No. 1" and delivered to the Lender pursuant to the Participation Agreement and the Security Agreement shall be deemed to constitute the only original of this Lease constituting "chattel paper" for purposes of the Uniform Commercial Code of the State of California, all other counterparts being deemed duplicates hereof. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed. This Lease shall constitute an agreement of lease and nothing herein shall be construed as conveying to the Lessee any right, title or interest in or to the Equipment, except as lessee only."

ARTICLE 7. This Amendment No. One to Lease of Railroad Equipment may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart marked "Counterpart No. 1" and delivered to the Lender pursuant to the Participation Agreement and the Security Agreement shall be deemed to constitute the only original of this Lease constituting "chattel paper" for purposes of the Uniform Commercial Code of the State of California, all other counterparts being deemed duplicates hereof. Although for convenience this Amendment No. One to Lease of Railroad Equipment is dated as of the date

first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

ARTICLE 8. Except as herein stated, all other terms and conditions of the Lease remain unchanged and are in full force and effect.

IN WITNESS WHEREOF, the parties hereto have each caused this Amendment No. One to Lease of Railroad Equipment to be executed by their respective officers thereto duly authorized.

STEINER FINANCIAL CORPORATION,  
as Lessor

By \_\_\_\_\_

Title \_\_\_\_\_

(SEAL)  
ATTEST:

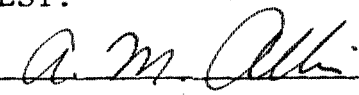
\_\_\_\_\_  
Title \_\_\_\_\_

MISSOURI-KANSAS-TEXAS RAILROAD  
COMPANY, as Lessee

By 

Title Vice President

(SEAL)  
ATTEST:

  
Title ASSISTANT SECRETARY

STATE OF CALIFORNIA )  
 : ss.:  
COUNTY OF SAN FRANCISCO)

On the \_\_\_\_\_ day of April, 1985, before me personally appeared \_\_\_\_\_, who, being by me duly sworn, did say that he/she is an Authorized Officer of STEINER FINANCIAL CORPORATION, that one of the seals affixed to the foregoing instrument is the seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation by authority of its by-laws and by resolution of its board of directors, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

(NOTARIAL SEAL)

My commission expires:

[illegible]

On the 2nd day of April, 1985, before me personally appeared Karl R. Ziebarth, who, being by me duly sworn, did say that he/she is an Authorized Officer of MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation, by authority of its by-laws and by resolution of its board of directors, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Notary Public

(NOTARIAL SEAL)

My commission expires:

4/29/86